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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

COUNTY OF ORANGE, Plaintiff and Respondent, v. J. DANIEL PINTO, Defendant and Appellant.	G033576 (Super. Ct. No. 94FL2497) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, W. Michael Hayes, Judge. Affirmed. Request for judicial notice. Granted. Supplemental request for judicial notice. Denied.

Daniel Pinto, in pro. per, for Defendant and Appellant.

Bill Lockyer, Attorney General, Douglas M. Press, Assistant Attorney General, Thomas R. Yanger and Mary Dahlberg, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

In 2001, J. Daniel Pinto and the County of Orange (the County) appealed from a judgment directing Pinto to pay monthly child support and reimbursement for amounts paid in public assistance for the support of his child. In *County of Orange v. Pinto* (July 10, 2002, G028855) [nonpub. opn.], review denied September 25, 2002 (the 2002 opinion), we concluded, inter alia, the Orange County Superior Court had jurisdiction over the County's action. We also held the trial court in calculating Pinto's child support obligations did not err in imputing income to Pinto, instead of relying on Pinto's reported monthly earnings of $73. We further held the trial court erroneously excluded newspaper advertisements offered by the County to show the existence of employment opportunities in determining the amount of income to impute to Pinto and erroneously imputed income to Pinto's former spouse, Holly Cua. We remanded with specific directions to recalculate child support and arrearages after admitting the newspaper advertisements into evidence, reconsidering the amount of income that should be imputed to Pinto in light of that evidence, and imputing no income to Cua.

Pursuant to our directions on remand, the trial court admitted the newspaper advertisements, considered evidence and argument related thereto, and recalculated Pinto's child support obligations. For the reasons set forth below, we reject Pinto's arguments and conclude (1) the judgment reflects the trial court's ruling, (2) Pinto was provided the opportunity to argue and present evidence regarding the proper weight the trial court should give to the newspaper advertisements, and (3) Pinto was not denied "fair treatment through the normal judicial system."

We therefore affirm.

BACKGROUND

In May 1993, Holly Cua initiated an action in Los Angeles County for dissolution of her two-year marriage to Pinto (the dissolution action), seeking, inter alia,

custody of the couple's son, Joshua, and child support. After Cua received public assistance from Los Angeles County for Joshua's support, the district attorney filed a lawsuit against Pinto for reimbursement of amounts paid by Los Angeles County to Cua (the Los Angeles reimbursement action).

On December 13, 1994, the court in the dissolution action issued judgment for dissolution, awarded Cua custody, and granted Pinto visitation rights. The court reserved judgment on the issue of support.

Cua and Joshua moved to Orange County, and Cua began receiving public assistance from the County for Joshua's support. The County filed a complaint against Pinto to establish child support, reimbursement for child support, and health insurance (the Orange County reimbursement action.). The Orange County reimbursement action was tried before Commissioner Sarmiento who recommended a monthly income of $7,000 should be imputed to Pinto, based on his expenses and lifestyle. The commissioner also recommended Pinto pay child support in the amount of $1,313 per month and reimburse the County $29,570 for the period of February 1994 through March 1999. Pinto objected to the commissioner's findings and requested a de novo hearing.

Judge Mason Fenton conducted the de novo trial in September 2000. Judgment was filed on March 16, 2001, requiring Pinto to pay child support in the amount of $470 per month beginning February 25, 2001, and an additional amount of $39,480 to the County for public assistance provided for Joshua from February 1994 through January 2001 (the 2001 judgment).

Pinto appealed on several grounds, including that Orange County Superior Court acted in excess of its jurisdiction and the trial court abused its discretion in imputing income to him for calculating child support and arrearages. The County also appealed, arguing the trial court, in considering whether to impute income to Pinto for child support purposes, erroneously excluded evidence of newspaper advertisements offered to prove the existence of employment opportunities available to Pinto. The

County appealed on the additional ground the trial court erroneously imputed a $1,000 monthly income to Cua. (Pinto's and the County's appeals of the 2001 judgment are collectively referred to as the 2001 appeal.)

In the 2002 opinion, we affirmed in part and reversed in part. We held, inter alia, Orange County Superior Court did not act in excess of its jurisdiction pursuant to Family Code section 17400. We also held the trial court did not abuse its discretion by calculating Pinto's child support obligations based on his earning capacity, not on his reported monthly earnings of $73. We reversed on the limited grounds the trial court should have admitted evidence of newspaper advertisements offered by the County to show the existence of employment opportunities and should not have imputed a monthly earning capacity to Cua. We remanded the matter to the trial court "with specific directions to recalculate child support and arrearages after (1) admitting and reviewing newspaper advertisements offered for the purpose of showing the existence of employment opportunities and in light of such evidence, reconsidering the amount of income that should be imputed to Pinto and (2) imputing no income to Cua."

Following issuance of the remittitur, Commissioner Julee Robinson set a hearing to recalculate child support and arrearages. Pinto objected to Commissioner Robinson under Family Code section 4251. On March 6, 2003, Commissioner Robinson issued a findings and recommendation of commissioner, stating in part: "1. The Defendant is found, as of February 1, 2001, to have the ability to earn and with reasonable effort and within a reasonable geographic area, the opportunity to earn $5000.00 per month taxable income. [¶] 2. The District Court of Appeal confirmed the tr[ia]l court's finding that Defendant had this same ability and opportunity to earn an income for the entire time frame at issue, February 1994 through January 30, 2001." Commissioner Robinson recommended Pinto be ordered to pay $768 per month beginning February 1, 2001, and to pay arrearages in the amount of $64,512 for the time period of February 1994 through January 2001, less all amounts Pinto had paid to date.

Pinto objected to the findings and recommendation, and requested the matter be set for a de novo hearing before a superior court judge. Pinto also filed an ex parte application seeking an order that the County remove his name "from any and all delinquency lists, and in particular to that of the State Bar." On May 14, 2003, Orange County Superior Court Judge W. Michael Hayes conducted a de novo hearing, and on June 19, issued a minute order stating: "The court having taken the rehearing de novo under submission on 5-14-03 now rules as follows: [¶] The court has reviewed the evidence to be considered as a result of the Court of Appeal opinion. [¶] The court makes no change in the existing order." Judge Hayes also denied Pinto's ex parte application for removal of his name from delinquency lists. On August 26, 2003, the judgment was signed, which stated the trial court "reviewed the evidence to be considered as [the] result of the Court of Appeal opinion and orders that the findings and recommendation of commissioner filed 03/06/03 become the order of the court."

Pinto appealed. Pinto filed requests for judicial notice of various documents, including "[t]he complete file and record" of the 2001 appeal.

On July 27, 2004, Pinto filed a petition for writ of supersedeas seeking a stay of enforcement of the judgment pending appeal, arguing the County "has sought to enforce the judgment which it obtained by certifying to the State Bar of California that Petitioner is not in compliance with Family Code [section] 17520." He argued he would be suspended on August 23, 2004, unless released by the County by August 20. On August 20, 2004, Pinto's petition was denied.

DISCUSSION

I.

REQUESTS FOR JUDICIAL NOTICE

Pinto requested judicial notice of several documents (exhibits A through G), and "[t]he complete file and record" of the 2001 appeal. Pinto's request for judicial notice is granted.

In a supplemental request, Pinto requested we take judicial notice of a newspaper article (exhibit H). (See McCarthy, *Attorneys with disabilities face tough job market*, Cal. Bar J. (Aug. 2004) p. 1.) Pinto's request for judicial notice of that article is denied.

II.

THE TRIAL COURT'S JUDGMENT FOLLOWING REMAND REFLECTS THE TRIAL COURT'S RULING.

Pinto challenges the judgment on the ground it was not consistent with the trial court's ruling as set forth in the June 19, 2003 minute order. He argues the trial court's minute order stated "[t]he court makes no change in the existing order," without identifying what was meant by the reference to "the existing order." He further argues the trial court could only have been referring to an order issued by the Los Angeles County Superior Court in the dissolution action since Orange County Superior Court Judge Fenton's order was reversed by the 2002 opinion, and Commissioner Robinson's findings and recommendation following remand did not constitute an effective order. Nothing in the record reasonably suggests the minute order's "existing order" language referred to a Los Angeles County Superior Court order. The judgment signed by Judge Hayes is clear: the trial court adopted the findings and recommendation of Commissioner Robinson.

Pinto appears to challenge the viability of the judgment on the ground the trial court signed a proposed judgment lodged by the County even though the trial court did not request such a proposed judgment. At the end of the de novo hearing before Judge Hayes, counsel for the County stated to the court: "I expect that the court will make[] its ruling and make preparation for the new judgment to myself or the county." The court responded, "Yes. And this matter has consumed under eight hours and therefore there's nothing further to be done." It does not matter that the minute order did not specifically order counsel for the County to prepare a proposed judgment. Pinto filed objections to the proposed judgment on August 11, 2003. There is no evidence in the record that the trial court failed to review those objections before signing the judgment 15 days later, or that the judgment did not reflect the court's intended ruling.

III.

THE TRIAL COURT PROVIDED PINTO THE OPPORTUNITY TO ARGUE AND PRESENT EVIDENCE REGARDING THE PROPER WEIGHT THE COURT SHOULD ASSIGN TO THE ADMITTED NEWSPAPER ADVERTISEMENTS.

In the 2001 appeal, Pinto argued there was not substantial evidence to support the amount of income imputed to him by the trial court for calculating his child support obligation. In the 2002 opinion, we concluded the trial court did not abuse its discretion in determining that Pinto's child support obligation should be determined based on his earning capacity, not on his actual earnings of $73 per month. For the evidence showed Pinto has a law degree and a master's degree in tax law, has performed a variety of legal services including criminal defense and civil litigation, and has been an active member of the California State Bar for 10 years. We concluded, however, the trial court erred by imputing income in the amount of $3,333 a month after improperly excluding evidence of newspaper advertisements offered to show "'many opportunities for employment at a salary much higher than claimed by Mr. Pinto or imputed by the trial

court.'" We remanded the matter to the trial court "to recalculate Pinto's imputed income after admitting and considering this evidence."

Pinto argues the trial court, at the de novo hearing following remand, did not permit him the opportunity to introduce evidence to rebut the County's evidence of newspaper advertisements. But the record shows Pinto was afforded this opportunity. At that hearing, the following colloquy occurred:

"The Court: Okay. How should we proceed? Because I've got to determine how much weight to give these articles, and that would only be appropriate if they never got in. He never got a chance to discuss whether or not I give them great weight, no weight, limited weight. [¶] So they're in, and I will review them. [¶] Sir, would you like to present some evidence in this regard?

"[Pinto]: Your honor, I have submitted in the my – as exhibits, exhibit 'E.'[1]

"The Court: No. I just need you to address the six exhibits and how much weight to give them, because that's the instruction I've been given by the Court of Appeal. [¶] And I do think it's only fair that you have a chance to address those specific items that were excluded that are now being included, but I'm not going back and retrying the case.

"[Pinto]: The exhibits that I'm referring to is doctors' letters that explained my disability—

"The Court: I'm not doing that.

"[Pinto]: —which is why—

"The Court: I'm not doing that.

"[Pinto]: Well, that goes to the weight of the —

"The Court: May I be clear. I am not doing that. Discussion is concluded.

[1] Exhibit E consists of three letters from Dr. Lawrence D. Dorr, dated July 11, October 1, and November 11, 2002. Each letter postdates filing of the 2002 opinion.

"[Pinto]: I think you should give no weight to the San Diego, Riverside, Fresno, and unspecified, which would be petitioner's 1, 2, 3, and 4.

"The Court: For what reason? Would you like to testify, sir?

"[Pinto]: Yes. Yes, your honor.

"The Court: . . . [¶] . . . I'm going to invite you to be sworn at this time and give me the testimony you'd like to give so that at least I have a record."

Pinto testified the trial court should have considered his physical disability, his inability to drive outside the Los Angeles area, and should have given no weight to the first four exhibits of the six exhibits. The court properly admitted and considered the evidence and arguments, and took the matter under submission.

IV.

PINTO'S ARGUMENTS HE WAS DENIED "FAIR TREATMENT THROUGH THE NORMAL JUDICIAL SYSTEM" FAIL.

Pinto contends (1) the trial court erred in failing to take judicial notice of the judgment rendered in the dissolution action; (2) the law has changed since the 2002 opinion providing newspaper advertisements offered to show employment opportunities constitute inadmissible hearsay; (3) "[r]espect for the human condition requires a compassionate response to [the County]'s attempts to impute income through 'earning capacity'" (italics omitted); and (4) the County was not entitled to the amount of arrearages set forth in the judgment. Each of Pinto's arguments fail for the reasons stated below.

First, Pinto argues he was denied due process because the County filed the Orange County reimbursement action, forcing him to relitigate the same issues already decided in the Los Angeles reimbursement action. Pinto further argues the trial court erred by failing to take judicial notice of the Los Angeles reimbursement action.

Pinto's arguments constitute an improper attempt to reargue issues he previously raised in the 2001 appeal, which were decided in the 2002 opinion. "'Litigants are not free to continually reinvent their position on legal issues that have been resolved against them by an appellate court.'" (*Joyce v. Simi Valley Unified School Dist*. (2003) 110 Cal.App.4th 292, 304.) In the 2002 opinion, we held that Orange County Superior Court had jurisdiction over the Orange County reimbursement action and that "the dissolution action and the Los Angeles reimbursement action" were "irrelevant to Orange County's right to pursue reimbursement and child support in this action." As discussed above, issues of jurisdiction are not before us in this case.

Second, Pinto cites *Crawford v. Washington* (2004) 541 U.S. 36 [124 S.Ct. 1354] and *Kulshrestha v. First Union Commercial Corp*. (2004) 33 Cal.4th 601, in support of his argument the law has changed, rendering newspaper advertisements offered for the purpose of showing opportunities for employment inadmissible hearsay. In the 2002 opinion, we cited *In re Marriage of LaBass & Munsee* (1997) 56 Cal.App.4th 1331, 1338, for the proposition newspaper help wanted ads were admissible for the nonhearsay purpose of showing the existence of offers to bargain. Neither *Crawford v. Washington* nor *Kulshrestha v. First Union Commercial Corp*. changed this legal principle.

In *Crawford v. Washington*, *supra*, 541 U.S. 36, __ [124 S.Ct. 1354, 1356-1357], during trial on charges of criminal assault and attempted murder, the prosecution played for the jury the defendant's wife's tape-recorded statement to the police even though the defendant had no opportunity for cross-examination. The United States Supreme Court held the evidence violated the confrontation clause of the Sixth Amendment to the United States Constitution, which provides "'[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.'" (*Crawford v. Washington, supra,* at p. __ [124 S.Ct. at p. 1359].)

Crawford v. Washington has no application to this civil case regarding Pinto's child support obligations.

In *Kulshrestha v. First Union Commercial Corp.*, *supra*, 33 Cal.4th 601, 606, the California Supreme Court held declarations signed under penalty of perjury outside the State of California, which do not include an acknowledgment that perjured statements might trigger prosecution under California law, are inadmissible in summary judgment and other authorized proceedings. *Kulshrestha v. First Union Commercial Corp.* has no application to this case either.

Third, citing this court's opinion in *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 711, Pinto argues his deteriorating health should preclude the imposition of child support obligations. In his opening brief he states, "[f]rom the time of trial until retrial, [Pinto] had to manage an appeal while suffering from pneumonia, had an additional surgery which left him partially disabled, and two other bouts of pneumonia." *Lerma v. County of Orange* involved a request for a continuance of a motion for summary judgment and had nothing to do with child support; this case has nothing to do with standards for continuances. Had Pinto's circumstances changed since trial on his child support obligations before Judge Fenton, he could have filed a petition for modification of those obligations, but did not. (See Fam. Code, § 3650 et seq.) Instead, Pinto pursued the 2001 appeal, necessarily limited to the evidence presented at trial before Judge Fenton, which, of course, could not include evidence of Pinto's health condition following trial. In the 2002 opinion we affirmed the 2001 judgment entered following trial before Judge Fenton, with only two exceptions—we held the evidence presented by the County which was excluded at trial should have been considered in the calculation of imputed income, and no income should have been imputed to Cua. As we directed on remand, after imputing no income to Cua, the trial court was only to recalculate child support in light of the evidence improperly excluded. Thus, the trial court properly limited the scope of the hearing on remand to consideration of that

evidence and any rebuttal evidence or argument by Pinto that had any bearing on that evidence. Pinto remains free to seek a modification of his child support obligations based on a change of circumstances.

Finally, Pinto argues the arrearage calculation in the judgment erroneously includes arrearages for the two months of February and March 1994 even though the complaint was filed in April 1994. He argues the County was limited to the recovery of arrearages incurred after the complaint was filed. The 2001 judgment calculated arrearages owed by Pinto for public assistance provided for Joshua's support from February 1994 through January 2001. The judgment, signed August 26, 2003, calculated arrearages based on the same time frame—February 1994 through January 2001. Pinto did not raise this issue in the 2001 appeal, and this issue was not before the trial court on remand.

Even if we were to reach the merits of Pinto's argument, we would conclude the County could have properly sought to recover amounts paid for public assistance for Joshua's support within three years before the complaint was filed. (See *Amie v. Superior Court* (1979) 99 Cal.App.3d 421, 423, 427 [county reimbursement action under former Welfare and Institutions Code section 11350 is subject to three-year statute of limitations under Code of Civil Procedure section 338, former subdivision 1, now subdivision (a)]; see also *County of Riverside v. Burt* (2000) 78 Cal.App.4th 28, 38.)[2] Therefore, since the complaint was filed in April 1994, the judgment properly included arrearages from February 1994 to April 1994.

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[2] Family Code section 17402, subdivision (a)(2) provides in relevant part: "In any case of separation or desertion of a parent or parents from a child . . . that results in aid under Chapter 2 . . . of Part 3 of Division 9 of the Welfare and Institutions Code being granted to that family, the noncustodial parent or parents shall be obligated to the county for an amount equal to the following: [¶] . . . [¶] (2) For all cases filed on or after January 1, 2000, the amount of support that would have been specified in an order for the support and maintenance of the family during the period of separation or desertion, *but not to*

DISPOSITION

The judgment is affirmed. Respondent is to recover costs on appeal.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.

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exceed one year prior to the date of the filing of the petition or complaint." (Italics added.)